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Erasmus and the Laws of Marriage

MICHAEL J. HEATH

Erasmus published the *Christiani matrimonii institutio*, dedicated with unforeseeable irony to Catherine of Aragon, in August 1526;[1] it was by no means his first pronouncement on marriage, but it is his most comprehensive discussion of the subject. It also continued and developed Erasmus's polemic with a series of opponents who had taken exception to his *Encomium matrimonii* (1518) and to his expanded annotation (1519) on St Paul's chapter on marriage, 1 Corinthians 7.[2] Like these earlier works, the *Institutio* expressed views which still arouse controversy today, in particular on womankind, on the vow of chastity, and on the sacramental quality of marriage. I shall discuss these three issues briefly, but devote most of this paper to a lesser-known but equally controversial element in the *Institutio*, Erasmus's proposals for reform of the laws of marriage. Since the Church claimed jurisdiction over matrimony, and since the prescriptions of canon law on the subject were precise and infinitely detailed, it is not surprising to find that, here again, Erasmus fell foul of more orthodox thinkers; his characteristic musings on the fallibility of "human constitutions" undoubtedly helped to ensure the proscription of the *Institutio* in its entirety in the Tridentine index of 1564.[3]

Erasmus's views on the female sex have aroused a good deal of interest,[4] especially with the rise of women's studies. The evidence of the *Institutio*

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[1] *Opera omnia*, ed. J. Le Clerc (Leiden, 1703–6 [LB]) 5:613–724; numerical references in the text in square brackets are to this edition. My translation of this work for the Toronto University Press, *Collected Works of Erasmus* (CWE), is awaiting publication.

[2] See Erika Rummel, *Erasmus and his Catholic Critics* (Nieuwkoop, 1986), 2:25–26, 39 and 74–78.

[3] In many respects this Index softened the blanket condemnation of Erasmus's works by Paul III, but on this treatise the censors were unyielding: see LB (n. 1 above) 10:1821A–B and Bruce Mansfield, *Phoenix of his Age* (Toronto, 1979), 26–27.

[4] Cf. among others, Clare M. Murphy's paper at this congress; Jennifer Roberts in CWE (n. 1 above) 66:183ff., and a number of recent studies by Anne M. O'Donnell.

suggests that in many respects Erasmus shared the prejudices of his age: he ignored the civil rights of the female and encouraged her parents, as well as the husband they chose for her, to treat her like a child or a servant, confining her to the home and prescribing in persnickety detail her duties as homemaker and child rearer. Nothing had changed, apparently, in two millennia: the section of the *Institutio* dealing with the "female domain" (692–97) resounds with the venerable precepts of pseudo-Aristotle and Xenophon on household management (*Oeconomica*). On the other hand, in less mundane contexts Erasmus shows considerable respect for the female, insisting, for example, on the absolute equality of male and female in the sight of God:

> Si Deus tantum honoris habuit foeminis ut in haereditate vitae coelestis, quae credentibus oblata est, eas aequet viris, qui convenit ut ab homine marito fastidiantur?
>
> If God held women in such esteem that he made them equal to men in offering the inheritance of heavenly life to those who believe, how can it be right for a human husband to disdain them? (706E)

Moreover, he suggests, like his equally misunderstood disciple Rabelais, that the best of women, the "preudes et chastes femmes,"[5] deserve the highest praise for overcoming their physical frailty: such women, inspired by the spirit of Christ, are indeed often allotted a most honorable and demanding role in the working out of the divine plan:

> Et tales foeminae permissu Dei nonnunquam incidunt in maritos temulentos, prodigos, pauperum expilatores, adulteros, aleatores, ut viros suos Deo lucrifaciant.
>
> Such women quite often find themselves married, by God's will, to husbands who are drunkards, spendthrifts, plunderers of the poor, adulterers, gamblers—in order that they may win their husbands for God. (705C)

Thus the evidence of the *Institutio* is inconclusive, and may be cited on both sides of the feminist divide: if Erasmus did not go so far as Henry Cornelius Agrippa, for example, who strongly advocated marriage for love in his *Declamatio de sacramento matrimonii*, published earlier in 1526, he could take justified pleasure in reproaching his friend Vives for harshness towards women in his condescending *De institutione foeminae Christianae* of 1524.[6]

Secondly, it is of course true that in the *Institutio*, as so often elsewhere,[7]

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[5] See François Rabelais, *Le Tiers Livre*, chap. 32.

[6] See Erasmus's *Epistulae*, 1830 and 1847; Vives in reply pleaded justification!

[7] See Jacques Chomarat's plenary paper at this congress and E.-V. Telle, *Erasme de Rotterdam et le septième sacrement* (Geneva, 1954), passim.

Erasmus cannot resist pouring scorn upon monasticism—just as good monks used to pour scorn upon matrimony. Quite apart from Erasmus's need to write out his own personal sufferings as a reluctant inmate of the cloister, it was at this time more or less obligatory to deal with the vow of chastity in a work on matrimony: one could not discuss in isolation any one of the "four states of life," virginity, chastity, marriage and widowhood. In the *Institutio*, Erasmus proposes, with only a hint of irony, a sort of wedded monasticism (647F): the vow of obedience is subsumed into every Christian's duty to obey the Lord's commandments, and the vow of poverty is fulfilled by supporting one's household and giving what is left to the poor; most important and most controversial, the vow of chastity here becomes an attitude of mind, instead of an external ritual which amounts to mere physical constraint unconnected with true piety. Moreover, Erasmus's protest against the imposition of monastic vows upon the unwilling novice is entirely consistent with his recommendations in the *Institutio* concerning the careful choice of a marriage-partner and on the necessity for the consent of all interested parties, which applies equally to marriage and to a profession of monasticism. It is not necessarily naïve to conclude that for Erasmus, as he affirms in the *Vidua christiana*,[8] each state of life has its own distinction and honor, endorsed by the sacred writings, and that each of us should be content with the state to which he or she has been called.

Thirdly, the sacramental question. Erasmus stands accused[9] of weakening the sacrament of marriage and thus encouraging the Reformers to remove it from the list of the seven sacraments (along with four of the others). One wonders whether the Reformers needed any encouragement, but in any event the sacramental status of marriage has always been open to question because, unlike the other sacraments, which are purely spiritual and ecclesiastical, it is a hybrid: both the civil and the ecclesiastical authorities have a vested interest in it. For this reason, as the Reformers were wont to point out,[10] St Augustine was not convinced that an automatic outpouring of grace was guaranteed during the performance of the sacrament, and it is over this matter that Erasmus too hesitates: in the *Institutio* he implies (619E, 623D) that the effusion of grace is conditional on the participants' state of mind (which is, of course, obvious to God). In all other respects, Erasmus's eulogy of marriage in the *Institutio*, and his reverent treatment of its "many symbolic representations of the divine mysteries" (623A), are scarcely to be compared with the fulminations of some Reformers against the prerogatives consequently claimed by the Church.

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[8] CWE (n. 1 above) 66:201.

[9] Most notably by Telle (n. 7 above), 257–71 and 367–82; see also J. B. Payne, *Erasmus: his Theology of the Sacraments* (Richmond, VA, 1970), 104–25.

[10] For example, M. Chemnitz, *Examen decretorum concilii Tridentini* (Frankfurt, 1596), 2:232; the usual reference is to Augustine's *De bono conjugiali*, chap. 32.

However, it cannot be denied that Erasmus expressed reservations about the sacramental status of matrimony, and his reasons are related to the main theme of this paper. If Erasmus has a motive for undermining matrimony as a sacrament, it is of course that a sacrament, once completed, is indissoluble except by God or by death. As I mentioned earlier (see n. 2), a great row had been caused in 1519 by Erasmus's expanded annotation on 1 Corinthians 7:39 ("If her husband be dead, she is at liberty to be married to whom she will"), because Erasmus seemed to be redefining "dead," and arguing that the famous (i.e., notorious) flexibility of the popes should be combined with Christian charity, to allow "certain marriages to be dissolved, not irresponsibly, but for serious reasons."[11] Erasmus is indeed arguing for total divorce, including the right to remarry, rather than the limited "separation from bed and board" which the medieval Church permitted in well-defined circumstances, but he is hardly advocating serial polygamy; he looks to reform of the law to provide some alleviation of the human misery caused by entirely hopeless marriages. In much of the *Institutio* his advice was designed precisely to prevent such marriages taking place at all, especially since to some extent the law seemed positively to encourage ill-assorted and potentially disastrous matches.

But Erasmus was not a lawyer; by what right did he presume to dictate to the professionals? It is hard for us to comprehend the passionate interest that legal studies aroused among the humanists; Renaissance intellectuals seem to have enjoyed nothing better than to wrestle with an arcane legal puzzle or two, and law books were bestsellers. It would also be hard to find an area of the law more intriguingly complicated than the law of marriage. This is not to suggest that the interest of Erasmus and many contemporaries was dilettantish; matrimony naturally entailed practical questions of immense social importance, since it involved such basic issues as legitimacy (a sore point with Erasmus), guardianship, inheritance and property. Whole tracts of Roman law are devoted to the financial implications of matrimony, and in this area, as Erasmus points out in the *Institutio* (638D), canon law recognizes and bows to Roman expertise.

To his credit, and despite having a personal interest in some of these questions, Erasmus in the *Institutio* devoted little space to financial matters; on the contrary, it enraged him that men would expend disproportionate amounts of time and effort on such transactions as buying a horse or a house, but would enter upon matrimony almost casually, against all the advice of the Ancients and of the scriptures (655–6). Erasmus was more exercised by the human consequences of such folly, though from time to time there surfaces a fascination with the legists' struggle to come to terms with the dilemma of marriage, posed by the general incompatibility between public utility and private desire, or between spiritual ideal and earthly pas-

[11] LB (n. 1 above) 6:692F.

sion, illustrated, as Erasmus points out, by the myth of the two Venuses (682A).

Partly because of such conflicts, marriage law was beset by paradox. On the one hand, it was distressingly easy to contract a valid marriage simply by uttering certain formulae in the present tense (*verba de praesenti*), or by consummating promises made in the future tense (*verba de futuro*). Voices had been raised against this system as early as the ninth century, but it had become rigidly encoded by the twelfth; widespread abuse eventually led the Council of Trent to accept Erasmus's advice and to legislate against clandestine marriages by seeking to impose more open and lengthier betrothal and a regularized form of ceremony.[12] Not that the Council would acknowledge the influence of the proscribed Erasmus! But perhaps we should take more seriously than usual the disclaimer with which Erasmus began his proposals for reform, since it is both more elaborate and perhaps more indicative of his intended audience than the regular appeals to treat his writings as mere jest or whimsy:

> Proinde quidquid hic dicturus sum, non aliter accipi velim quam si in Concilio, in quo tractaretur haec causa, quilibet e turba considentium sedulo suam adferret sententiam, meliori cessuram, aut irridendam etiam, si mereatur.

Thus I wish everything I am about to say to be treated as if it were a speech made by one individual from among all those gathered at a Council to discuss these matters; he gives his considered opinion, but is prepared to yield to a better, or to be laughed out of court if he deserves it. (643C–D)

Part of Erasmus's plan was thus to make it more difficult to get married than under the system of *verba de praesenti* and *verba de futuro*. But, paradoxically, if marriage was too easy to enter, it was extremely difficult to escape. Erasmus uses the image of marriage as a net (like that depressing 15th century collection of tales ironically entitled *Les Quinze Joyes de Mariage*[13]), a trap which imprisons the unwary in the toils of an arbitrary ecclesiastical authority (633B–C). Hence Erasmus's appeals for a more humane system, allowing divorce in cases where the marriage is clearly a source of almost suicidal unhappiness, where the partners are effectively dead to one another; where, as he graphically puts it:

> Vivi enim suos patiuntur manes, et ad aeternos praeludunt ejulatus.
>
> For the living suffer the torments of hell (cf. Virgil *Aeneid* 6. 743), and on earth utter the wails of the damned (641E)

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[12] On the medieval position, see Gratian's *Decretum*, 2.30.5.3 and, for Erasmus's proposals, the *Institutio*, 651. The Council of Trent's decrees may be found in H. J. D. Denzinger, *Enchiridion symbolorum* (35th edition, Barcelona; 1973), 1813–16.

[13] See *Poètes et romanciers du moyen âge*, ed. A. Pauphilet (Paris, 1943), 492–94.

Erasmus was not simply playing the misty-eyed libertarian here. He appeals to logic and common sense as well as to charity, and often goes into detail on specific points of law. For example, canon law decreed that a husband would lose the right to put away his adulterous wife (i.e., to banish her from his bed and board) if he slept with her after discovering her crime; Erasmus argued strongly (700C–D) that this would have the effect, in practice, of discouraging husbands from attempting reconciliation, and would penalize charity. " 'At lex,' inquies, 'sic interpretatur' " (" 'But that,' you will say, 'is the meaning of the law' "). It is clear what Erasmus thought of such regulations.

But—paradoxically again—it was in fact almost laughably easy to annul many supposed marriages, under the ecclesiastical regulations known as impediments. These were (and are) of two kinds: prohibitive impediments, which forbid a marriage to be contracted but do not dissolve it if it has been; and diriment impediments, which both prohibit and dissolve unions which contravene them. This division is an oversimplification, according to Erasmus:

> Some impediments suspend the contract temporarily, while others both prevent it being legally made and destroy it if it has been. Some of them dissolve a legally valid marriage which has not been consummated. A few will dissolve any contract so completely that not even the Roman pontiff can mitigate the rigor of the law, whereas in a few other cases he can if he wishes ratify a contract improperly made. Again, some break up the home and the marriage-bed, while others restore the male and the female to their former condition. There are some which do not break the lifelong bond nor the sharing of the marriage-bed, but merely remove the right to demand one's conjugal rights, usually from one partner, but sometimes from both. . . . And already around every one of these impediments swarms a host of questions and countless disputes among the commentators. (633D–E; the Latin is equally tortuous)

Erasmus has one very simple proposal for shortening this dizzying catalogue. He points out (645D) the logical flaw in the prohibitive category (that flouting of the law is apparently condoned *a posteriori* by the law) and argues that this distinction should simply be abolished: the law here is uncertain and shifting, because papal decrees down the centuries have been contradictory and, above all, because the power of dispensation can effectively override almost all prohibitive impediments.

The preceding quotation is the preamble to a most striking section of the *Institutio*, the list of eighteen particular impediments on which Erasmus provides a commentary (633–41), based apparently on his own remarkably extensive reading of the canonists, rather than on a digest or handbook (the annotation on 1 Corinthians 7 already shows wide first-hand knowledge of the medieval sources). Erasmus's commentary on the commentators is fasci-

nating in its variety. Sometimes, in complex and discursive arguments with Thomas Aquinas or Duns Scotus (e.g., 634–6), he appears to use the old, eclectic *mos Italicus*, accumulating precedents, contradictions and distinctions; elsewhere he follows the humanist *mos Gallicus*, which is selective and expurgatory, to expound the comparative wisdom and practicality of imperial Roman law, praising the "veterum prudentia," for example on betrothal customs (624D–F).

On certain impediments, such as ecclesiastical interdict and local custom (633E, 640E), Erasmus has little to say, presumably because he considers them merely provisional or impossibly diverse. On others, such as consanguinity, he accepts the Church's judgment, no doubt because it coincides with natural law; in fact he remarks on the restraint of the medieval popes who reduced the prohibited degrees of kinship from seven to four (638C). It is also interesting to find that Erasmus, the scourge of Judaizing formalism, accepts (644F) the impediment of *feriae*, the Church's prohibition of the marriage ceremony on and around Church festivals; this is consistent with his recommendation to his ideal couple that they should abstain from the marriage-bed at those times, out of piety (699F).

Where Erasmus resorts to sarcasm and satire is in dealing with papal or episcopal regulations unknown to Judaic, Roman or natural law, and apparently having no basis in piety either. New and, to Erasmus, bogus impediments such as spiritual kinship and public propriety are mere human inventions; his scorn for them inspires a sustained attack on the pretensions of the papacy which is at least as forceful as his attack on monasticism (some of which is a commentary on the impediment of "vows"). Spiritual kinship forbade marriage between godparents and their godchildren, and also between the relatives of both, to the fourth degree; Erasmus denounces it (643D–644E) as a jealous popish invention, designed to given an ecclesiastical version of the quite acceptable impediment of consanguinity. If spiritual birth is to be an impediment, he says, it would be more logical, as well as more pious (however inconvenient it might be), to apply it to evangelization; but what would become of the heathen wife converted by her husband? And why does it apply only to the sacrament of baptism? Similarly *publica honestas*, public propriety, prohibiting marriage between the relatives of those who had once been betrothed, or between a widow and her dead husband's relatives, was for Erasmus a popish version of the impediment of affinity, relationship by marriage, and so obviously an unnecessary complication that even the popes had relaxed its strictures recently (640E). Here, Erasmus could not point out the superiority of the imperial "equivalent," since the Roman regulation called *honestas* prohibited free men from marrying courtesans or actresses; how could the author of the colloquy "The Young Man and the Harlot" approve such snobbery?

To sum up: the underlying and characteristic theme of Erasmus's critique of the impediments is that canon law must take less account of the specious and empty theorizing of the defenders of papal privilege, and concentrate

upon solving the practical problems of matrimony, and upon the needs of men and women made of flesh and blood, provided always that these solutions fulfill the requirements of scripture, piety and nature. The law should not merely permit marriage as a remedy for human weakness, but actively promote it as a route towards godliness. The humanist sense of historical perspective was useful to Erasmus here; just as the patriarchs were permitted a relative promiscuity, in order to people the earth, so the apostles preached chastity in order that examples of purity might win the harvest for Christ (628D). Now, in a period of institutional decline, marriage must help restore social and spiritual integrity; Erasmus is one of the first to depart from the Pauline and Augustinian tradition and to regard sex as a natural necessity rather than a mere concession to human frailty; conducted with restraint and decorum, sexual relations are an integral part of a successful marriage (697–98).

This conviction explains and justifies the attention Erasmus gives in the *Institutio* to the physical side of marriage. It is an example of the way in which in this work legal issues (on sexual matters, these tend to cluster around adultery, a frequent topic of the *Institutio*) shade into ethical and even practical physical concerns; to consider no more than the theological and juridical elements of the *Institutio* would be seriously to misrepresent the treatise as a whole. The combative program for canonical reform adumbrated here is balanced by a comprehensive blueprint for the ideal marriage delivered, it has been unkindly remarked, with all the invincible assurance of the confirmed bachelor. But Erasmus was not acting alone: supported by his beloved Plutarch and inspired by the classical poets, buoyed up by the mature *philosophia Christi*, he produced a work which sought to raise marriage above the petty-minded wranglings of the schoolmen and to restore to it three indispensable qualities: faith, enshrined in the unswerving fidelity of the happily married; hope, in the procreation of healthy and well-favored children; and the greatest of all these, love.

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